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13 UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

15 In Re Bard IVC Filters Products
16 Liability Litigation

17 No. MD-15-02641-PHX-DGC

18 SHERR-UNA BOOKER, an individual,

19 Plaintiff,

20 v.

21 C.R. BARD, INC., a New Jersey
22 corporation and BARD PERIPHERAL
23 VASCULAR, an Arizona corporation,

24 Defendants.

25 **PLAINTIFF'S MOTION IN LIMINE #11
26 AND MEMORANDUM IN SUPPORT
TO EXCLUDE THE INFORMED
CONSENT FOR SURGERY FORM
SIGNED BY MS. BOOKER**

27 (The Honorable David G. Campbell)

28 (Oral Argument Requested)

29 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE TO
30 EXCLUDE THE INFORMED CONSENT FOR SURGERY FORM SIGNED BY
31 MS. BOOKER**

32 Plaintiff seeks a pretrial ruling to preclude at trial evidence and argument relating
33 to the “Permission For Operation And/Or Procedure” form Ms. Booker signed prior to
34 insertion of her IVC filter. The form did not disclose or warn Ms. Booker of the long-
35 term risks associated with her G2 filter, is not specific to IVC filter implantation, and her
36 execution of the form does not indicate she consented to those risks.

MEMORANDUM OF LAW

The form Ms. Booker signed consenting to the surgical procedure to insert her G2 filter, is just that: a generic consent to the surgical procedure. *See* "Permission For Operation And/Or Procedure" form, Exhibit A. The form she signed gave consent to the risks of the procedure only and fails to mention anything regarding the long-term risks related to any IVC filter, and certainly not Bard's IVC filters. The form consists of boilerplate language with the procedure and the physician information to be provided on a fill-in-the-blank basis, therefore, the form was not even designed specifically to consent to an IVC filter implant procedure. It is not relevant. Fed. R. Evid. 401, 402.

Arguing or testifying that Ms. Booker in any way “consented” to the long-term risks of tilt, migration, perforation, fracture, or potential open-heart surgery for retrieval of fractured limbs by signing this form would be false and misleading. Fed. R. Evid. 402, 403. The argument has a substantial chance of confusing the jury into believing that by signing this form Ms. Booker did in fact “consent” to whatever happened with the filter after that. This is unfairly prejudicial to Plaintiff. Fed. R. Evid. 402, 403. And, the form has no relevance to the issues in this case since it is not IVC, much less Bard, specific. Fed. R. Evid. 401, 402. Even if it were relevant, it has no probative value whatsoever and the interpretation a jury might draw from its mere presence as evidence in this case is heavily outweighed by the unfair prejudice and likelihood of juror confusion that will result from its introduction.

Even if the form were relevant, which it is not, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, being unnecessarily time consuming, or needlessly presenting cumulative evidence. Fed. R. Evid. 401, 402, 403.

Accordingly, the Court should grant Plaintiff's motion and enter an Order barring any argument, testimony, or evidence regarding the "Permission For Operation And/Or Procedure" form Ms. Booker signed prior to insertion of her IVC filter.

1 RESPECTFULLY SUBMITTED this 26th day of January, 2018.
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3

4 GALLAGHER & KENNEDY, P.A.
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6

7 By: /s/ Mark S. O'Connor
8

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21 *Co-Lead/Liaison Counsel for Plaintiffs*
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24 **CERTIFICATE OF SERVICE**
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27 I hereby certify that on this 26th day of January, 2018, I electronically transmitted
28 the attached document to the Clerk's Office using the CM/ECF System for filing and
transmittal of a Notice of Electronic Filing.
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